set forth the particulars of the damage sufficiently to enable defendant to know what is relied on.

2. In an action for slander by spoken words there can be no recovery, in the absence of a plea and proof of special damages, unless the words impute the commission of a crime. *Doyle* v. *Kirby* (Mass.), 68 N. E. 843.

ATTORNEYS — CONTINGENT FEE — PROSECUTION OF ERROR. — Attorneys who have undertaken to establish, for a contingent fee, a client's right to a fund in court, and who, after rendering valuable services, have been defeated in the district court, and who have furnished a supersedeas bond to retain the fund, and are taking steps to have the decision against their client reviewed on error, are entitled, when their client under these circumstances refuses to pay them and instructs them to proceed no further on her behalf, to be allowed to prosecute error proceedings in her name on their own behalf, in order to collect their contingent fee out of the fund still in court, if they can establish their client's right to it. *Counsman* v. *Modern Woodmen* (Neb.), 98 N. W. 414.

ORIGINAL JURISDICTION—SUITS BETWEEN STATES ON STATE BONDS—NECESSARY PARTIES DEFENDANT.—Individual owners of bonds issued by the state of North Carolina, each of which is secured by a separate mortgage of ten shares of railroad stock belonging to that state, are not necessary parties defendant to a suit by the state of South Dakota, as the owner of certain of these bonds, to compel payment and a subjection of the mortgaged property to the satisfaction of the debt.

The original jurisdiction of the Federal Supreme Court, under U. S. Const., art. 3, sec. 2, over "controversies between two or more states," extends to a suit by the state of South Dakota as the donee of the holders of certain bonds issued by the state of North Carolina, and secured by a mortgage of railroad stock belonging to that state, to compel payment of the bonds and a subjection of the mortgaged property to the satisfaction of the debt. *South Dakota* v. *North Carolina*, 24 Sup. Ct. 269. Four members of the court dissent from this decision "as disregarding an express and absolute provision of the Constitution."

BANKS AND BANKING—EFFECT OF DEPOSIT OF CHECK IN BANK.—When, in the absence of fraud, a check is presented in bank by the payee, and received as a deposit, and credited on his account in the bank, the check is paid. The transaction is the same in effect as if the cash had been handed to the payee, and by him returned to the bank. This result does not depend on the amount of cash in the bank being equal to the check, nor on the financial condition of the bank, as shown later on a settlement of its affairs after insolvency. *Montgomery County* v. *Cochran* (C. C. A., Fifth Circuit), 126 Fed. 456.

Per Shelby, Circuit Judge:

"The transaction is the same as if the cash had been handed the depositor,

and by him returned to the bank. This effect cannot, we think, depend on there being cash enough in the bank at the moment the check is presented to pay it. We find no such limitation of the doctrine in the cases. Banking, we know, is based largely on a system of credits. Few banks, when entirely solvent, could pay in cash checks if presented at once for all liabilities to depositors. Cash is retained in the till sufficient for the transaction of business, with the knowledge of its usual course—that the business is based largely on a system of credits. So the legal effect given the transaction cannot, we think, be limited by the amount of actual cash that Josiah Morris & Co. had on hand at the date of the deposit of the check.

"Can the effect of the deposit of the check be limited by the financial condition of the bank on the settlement of all of its business transactions? It cannot, we think, for obvious reasons. There might be cash enough in the bank to pay the check when presented, and yet the bank be insolvent in fact. A bank might continue its business for many days when its financial condition was such that it could not, on liquidation, discharge all of its liabilities; and later, by the appreciation in value of its assets, it might become solvent. We find no authority and no reason for limiting the effect of the deposit by the financial condition of the bank."

ACTIONS—DISCRETION OF TRIAL COURT—ILLUSTRATION BEFORE JURY OF IMPAIRED PHYSICAL CONDITION.—To permit the plaintiff in an action for personal injuries to illustrate before the jury his impaired physical condition, claimed to have been the result of the accident in question, by writing his name, spilling a glass of water which was handed to him and other similar performances, is a stretch of judicial discretion which would justify the Appellate Division in ordering a new trial. Being a discretionary matter, however, it does not constitute such an error of law as will permit this court to reverse the judgment. *Clark* v. *Brooklyn Heights R. Co.* (Ct. App. N. Y.), 30 N. Y. Law Journal, 1685.

Per Gray, J.:

"We think that the court should not have stretched its discretion to such an extent, and that, while it was not an abuse of judicial discretion, it was on the border line of such an error.

"The object of all evidence is to inform the trial tribunal of the material facts, which are relevant as bearing upon the issue, in order that the truth may be elicited and that a just determination of the controversy may be reached. It is not objectionable, in these cases, that the evidence may go beyond the oral narrative and may be addressed to the senses; provided that it be kept within reasonable limits by the exercise of a fair judicial discretion. It should be only of a nature to assist the jurors to an understanding of a situation, or of an act, or to comprehend objective symptoms resulting from an injury. Examples of this class of evidence are frequent; in the viewing of the place of an occurrence, in the production of some article relevant to the issue, or in the exhibition of the person and of the marks, or obvious evidences, of injuries sustained. Personal injuries may